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EXAMINER

TRAN, KHOA H

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,384

Applicant(s)

KEBERLEIN, GERALD JAMES

Examiner

Khoa Tran

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8,11-17 and 19-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8,11-17 and 19-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Objections

Claim 1, lines 10-11, claim 32, line 32, and claim 37, lines 1-3, "a perforation line" should be --perforation lines-- in order to make sense and agree with what has been shown in the drawings. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 33, 35, and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With respect to claims 33, 35, and 38, the recitation of "the first outer side wall and the first inner side wall which are not secured to each other" and "the second outer side wall and the second inner side wall which are not secured to each other" are considered new matters because there is no support in the original disclosure of what is being claimed. In particular, it should be noted that Figure 2 illustrates the respective outer sidewalls (22 or 28) are connected to the respective inner sidewalls (27 and 29).

Claims 2, 33, and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. Claim 2 appears to be misdescriptive and/or inaccurate because the second sidewall (28) does not have a second flap (30b), see Figure 2. It appears that "the second side wall" should be --a second inner sidewall--. With respect to claims 33, and 38, the claims appear to be misdescriptive and/or inaccurate because the arch dividing lines (36, 37) does not locate between the respective outer sidewall and inner sidewall. It appears that "outer side wall" should be changed to --flap--. Note that the outer sidewall has been defined as the wall connecting between with the inner sidewall and a bottom (26).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 10, 11, 19, and 31-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Lane. Lane discloses a carton tray that meets all limitations of the claims. For example, the carton tray of Lane comprising a one piece blank foldable into a carton tray. The tray has a bottom wall panel (3) including access notches (14) for holding down the tabs, the bottom wall panel (3) is connected to the respective first and second sidewalls (left side and right side of the tray). The first wall comprises a first outer sidewall (4) and a first inner sidewall (5) and a second wall comprises a second outer sidewall (4) and a second inner sidewall (5). The bottom wall panel is attached

between the first and second outer sidewalls (4) at the first and second edges (2), a respective first and second inner sidewalls (5) connected to the respective first and second outer sidewalls (4) at the third and fourth edges and connected to the respective first and second flaps (11) at the fifth and sixth edges (10). The respective flaps (11) having a perforation line (8) that is cutout to define an arch (17) and a tab thereof, wherein the perforation line cutout and the arch are located on the respective inner sidewalls. See Figure 1. The flaps are secured to the bottom wall panel and wherein the first sidewall and the second sidewall are canted towards each other in a relaxed position, as shows in Figure 2, without supporting any item on the tray.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane as applied to claims 1, 2, 5, 10, 11, 19, and 31-38 above, and further in view of Gambardella et al. Gambardella et al. teach the adhesive (58) on the blank carton. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carton of Lane with the provision of adhesive as taught by Gambardella et al. in order to glue two walls together.

Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane as applied to claims 1, 2, 5, 10, 11, 19, and 31-38 above, and further in view of R. B. Meller. Meller teaches the first and second sidewalls (9) are in a relaxed position and in a tensioned position upon an item is inserted therebetween on the tray. See Figures 3 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to utilize a flexible blank material to construct a tray therewith as taught Meller in order to enable the tray to automatically lock and hold the individual item of the merchandise against accidental displacement or removal.

Claims 13-16, 21-27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane in view of R. B. Meller as applied to claims 1, 2, 5, 8, 10-12, 19, and 31-38 above, and further in view of Allan H. Miller. Miller teaches the tray supports tissue napkin (21) and a removable outer protective wrap (26) that configured to encase and surround the tray. See Figures 1, and 7. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to utilize the tray of Lane to support tissue napkin and food product with a protective wrap enclosing the tray as taught by Miller in order to keep the item that is supported on the tray from nature contamination. With respect to claim 15, it would have been an obvious matter of choice of design at the time of the invention to provide sidewalls with decorative motif for aesthetic purpose thus producing no new matter and unexpected results.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane in view of R. B. Meller and Allan H. Miller as applied to claims 1, 2, 5, 8, 10-14, 16, 19, 21-27, and 29-38 above, and further in view of Gambardella et al. Gambardella et al. teach

the adhesive (58) on the blank carton. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carton of Lane with the provision of adhesive as taught by Gambardella et al. in order to glue two walls together.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harrelson, Correll, and Katchmazenski are cited to show devices having similar configurations of design.

Response to Amendment

Applicant's arguments with respect to claims 1, 2, 4, 5, 8, 10-17, and 19-38 have been considered but are moot in view of the new grounds of rejection.

The new grounds of rejection were necessitated by applicant's amendment, e.g., protective wrap surrounds the carton, see claim 23, line 9-10; "a first arch located on the first inner side wall" see claim 1, line 10.

With respect to applicant's remarks that Lane fails to teach an arch as defined in claim 1, the examiner respectfully disagrees. It should be noted that an arch of Lane is defined by the cutout references by numeral 17 of the edge thereof. See Figure 2.

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be

submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the
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Type or printed name of person signing this certificate:

(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran
June 28, 2003



Alvin Chin-Shue
Primary Examiner